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CONCORD, N.H.

1953

July 9

Mr. C. C. Chase, State Treasurer,
Concord, New Hampshire

Dear Mr. Chase:

In reply to your letter of July 6, 1953, regarding the contingent fund and to be made by you acting as custodian of the contingent fund solely at the request of the Director of Public Security, or whether you as such custodian should require supporting vouchers before making payment, I advise as follows:

Section 22, chapter 252, Revised Laws, as amended by section 20, chapter 57, Laws of 1947, and section 15, chapter 252, Laws of 1951, by which the contingent fund is created, is hereby cited:

"This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury."

Under 2 Laws, chapter 25, section 5-a as inserted by section 2 of chapter 25, Laws of 1947, and sections 2 and 3 of chapter 252, Laws of 1951, and chapters 251 and 252 of Laws of 1953, set out the manner in which funds may be disbursed.

Even if the contingent fund should be regarded as a revolving fund, as authorized by said section 15, chapter 252, Laws of 1951, it is clear that no payment from a revolving fund shall be made until the proper voucher and until the specific payment has been authorized by the Director of Accounts and warranted by the Treasurer and the vote and consent of the Council. After such voucher and warrant, the Treasurer shall be authorized to issue out of the fund to maintain the authorized balance of the revolving fund concerned. (Laws of 1951, chapter 252, section 3).

Alfred S. Glavin, State Treasurer - 2 -

July 9, 1933

Section VII of section 12 of chapter 23-A of the Revised Laws, as amended by section 1, Part 6, chapter 5, Laws of 1932, and section 3, chapter 116, Laws of 1931, requires that the Director of Accounts transmit all claims to be presented for the payment of warrants and certify to the Governor and Council that such are just and proper claims against the state and within the appropriations provided by statute, and that, before such certification and payment, the Director of Accounts shall require documentary evidence of the debt in a form sufficient to show that the person or individual responsible for certifying the debt had the authority for so doing, had knowledge of the amount due, possessed the authority for the approval of the invoice, and, in regard to warrants for capital improvements, had knowledge of the work actually completed.

By said chapter 23-A, section 12, as amended, the Director of Accounts is required to prepare appropriate warrants and certificates of any valid receipts supporting the same, and the certification of such execution by the Governor with the advice and consent of the Council.

By Laws of 1931, chapter 234, section 6, IV, we are required to administer the contingency fund "in accordance with the provisions of this act and the intentions of the state and shall shall pay all such claims as may be presented in accordance with the provisions of . . . the Laws of this state. . . ." solely for purposes set forth in said chapter.

It is my opinion that you should require supporting vouchers before making payment. If an authorized reference is made to should be established upon the furnishing of such vouchers to run through the Division of Accounts to properly verify the correctness of the expenditures.

Very truly yours,

George F. Nelson
Assistant Attorney General

cc: Mr. Glavin

cc: Mr. Wright,
Legislative Budget Assistant

July 7, 1953

George F. Nelson
Assistant Attorney General

Mr. Roy Y. Lang, Director
Division of Personnel

Dear Mr. Lang:

Regarding your questions as follows:

1. Where trades employees work 40 hours in one institution (five - 8 hour days) and in another institution 44 hours (five and one-half - 8 hour days) trades employees of the latter institution customarily being paid overtime for work on the extra half day, should the trades employee in the latter institution be entitled to overtime after having been out one day during the week on sick leave, if he works on the extra half day?

2. Where employees are on a staggered work week schedule with varying hours on different days, when does overtime start?

The answer to question 1 depends on whether or not it is the intent of the Legislature to compensate the trades employee for hours worked over the basic 40 hour work week or to induce the employee to report regularly on the extra day.

Chapter 211 Laws of 1953 states specifically that the standard work week for trades employees is reduced to a basic 40 hour week and the 4 hours extra per week is allowable for compensation to be in the form of overtime that is actually worked. (In this regard see also Laws of 1953 chapter 266, section 12 relating to Law Enforcement Employees.) In effect the trades employee whose regular working week is 40 hours gets extra compensation at the rate computed by dividing his regular weekly rate by the basic hours for the 4 hours, or fractions thereof that he works over 40. The trades employee regularly employed at 44 hours per week gets paid extra compensation for the last 4 hours if he works them in excess of the basic 40. (The Law Enforcement Employee who works 48 hours gets paid extra compensation for the last 4 hours over the new basic 44 hours of his 48 hour stint.) The custodial employee who works 51 hours gets paid extra compensation for the last three hours over his basic 48.

It is noted that the Act of 1953, chapter 211 applies to salaries of trade employees and not to employees working on an hourly rate, and therefore the basic overtime would not accrue until 40 hours had been actually worked, excluding sick leave (in the case of Law Enforcement Officers 44 hours worked excluding sick leave). For overtime computation purposes it would seem that an employee absent

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because of inability to work is neither working nor standing ready to work and it would not seem to be improper to fail to include in the computation of his hours worked the hours in which he was absent from work on account of such illness whether such illness is compensated for otherwise by sick leave or not. Sick leave, if accrued, would be added. The statement in the statute that "the increases in salary authorized by this act shall be deemed to be a part of the salary scale for classified state employees and said scale shall be increased accordingly", does not signify a right in the trades or police employees to collect these extra amounts unless the requisite hours have been actually worked. The Legislature has expressly stated that "it is the legislative intent that . . . the standard work weeks have been lowered . . .". The work weeks have been lowered by the equivalent period allowable for overtime and such overtime is payable only for time actually worked in excess of the new standard work weeks.

The answer to question 2 is that where there is a split day plan of staggered work which has been in effect prior to the 40 hour week legislation, the overtime is payable for hours actually worked in any week in excess of 40 hours. It will be noted that the Legislature did not attempt to regulate the daily hours but the weekly hours only. Except in cases where labor is otherwise regulated by Revised Laws, chapter 212 as amended such rule will apply.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFN:FM